



Case Study

Attorney Fees
ORS 20.080 & Claims
Less Than \$5,500

— by Jennifer Krumm

ORS 20.080 provides that, if a lawsuit involves damages of \$5,500 or less, the plaintiff is entitled to attorney fees if the defendant was served with a written demand for those damages at least 10 days prior to the filing of a lawsuit, and the damages awarded exceed the money the defendant tendered to the plaintiff before the suit was filed. Because the term "tender" is not defined, the law is somewhat unclear about what a defendant must do to avoid paying attorney fees under ORS 20.080.

For example, in Fresk v. Kraemer, ___ Or. ___ (10/21/04), the plaintiff was injured during a motor vehicle accident with the defendant. In December 1999, she made a written demand upon the defendant for \$5,500. Defendant responded with a counter-offer of \$3,806. The plaintiff rejected the counter-offer because it was contingent on the plaintiff releasing Defendant from further liability.

The plaintiff then filed a lawsuit seeking \$5,500 in damages plus attorney fees under ORS 20.080. The case proceeded to arbitration. The arbitrator concluded that the plaintiff was entitled to \$2,972 in damages, which was \$834 less than the defendant's pre-litigation offer. The plaintiff appealed the arbitration decision, and so the case went to trial. A jury awarded the plaintiff \$2,930 in damages, which was \$876 less than the defendant's pre-litigation offer.

Even though the plaintiff was awarded less money than the defendant had offered her before she filed suit, the plaintiff asked the trial court to award her \$33,000 in attorney fees under ORS 20.080. She argued that, because the defendant's counter-offer had been contingent the execution of a release, the counter-offer had not been an effective "tender" for purposes of ORS 20.080. The trial court agreed, and awarded fees to plaintiff.

On appeal, the Oregon Supreme Court defined "tender" as "an offer that is coupled with no conditions or only conditions for which the tendering party has a right to insist." It then concluded that the plaintiff was not entitled to attorney fees under ORS 20.080, because the defendant had the right to insist on a release when tendering money in settlement of the underlying claim.

Adjusting Pointer: A defendant may insist on a release when settling a claim for \$5,500 or less without being subject to attorney fees under ORS 20.080.

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